IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5273 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUTCH DISTRICT PANCHAYAT

Versus

SHUSHILABEN PRATAPBHAI PARMAR

Appearance:
MR HS MUNSHAW for appellant
MR SURESH M SHAH for Respondents Nos.1 to 4
MR LR PUJARI AGP for respondent No.5.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. Admit. The learned advocate appearing for the respondents Nos.1 to 4 waives service for the respondents Nos.1 to 4 and Mr. L.R. Pujari, learned AGP waives service for the respondent No.5. At the request of the learned advocates for both the sides, the appeal is taken up for final hearing.

2. The appellant Panchayat has preferred this appeal against the judgment and order dated 30.7.1999 decreeing the suit of the plaintiffs in the sum of Rs.3,75,000/- with costs and interest at the rate of 15% per annum from the date of filing of the suit.

3. The case of the respondents/plaintiffs was that they are the legal heirs of the deceased Pratapbhai who on 21.11.1992 at about 9.15 P.M. while proceeding towards Khirsara on Naranpar - Khirsara road on a motorbike at a moderate speed, fell in a trench on the road and sustained injuries which caused his death. According to the respondents/plaintiffs, death of Pratapbhai was a direct result of the gross negligence on the part of the employees of the appellant Panchayat and its contractors in not providing a diversion near about the trench and in not putting up any signboard showing that there was a trench. The deceased was a businessman with an income of Rs.3,000 to Rs.4,000 per month. He was 35 years of age and by his premature death there has been loss of dependency of the respondents/plaintiffs. They claimed a total compensation of Rs.7,12,000/- which included Rs.6,72,000/- as an amount of pecuniary benefit that they would have got had he remained alive.

4. The appellant Panchayat contested the suit and denied that there was a deep trench at the place where Pratapbhai fell with his motorbike. It was denied that there was any negligence on the part of the employees or contractors of the Panchayat. The liability to pay any compensation was denied. The income of the deceased was also disputed.

5. The trial court on the basis of the evidence on record came to a finding that Pratapbhai fell into a trench while he was going on a motorbike on Naranpar-Khirsara road towards Khirsara and the injuries sustained by him in the said mishap resulted in his death. It was also held that death of Pratapbhai was due to the negligence on the part of the employees or

contractors of the Panchayat. The court decreed the suit for a sum of Rs.3,75,000/- which included Rs.3,45,000/- under the head of loss of dependency.

6. The learned counsel for the appellant contended that there was no satisfactory evidence to show that there was any trench on the road dug by the Panchayat. He submitted that the photographs Exhs. 50 to 53 did not show any such trench. He also submitted that there was no eye witness to the incident. He, therefore, submitted that in absence of any reliable evidence, the trial court was in error in coming to the finding that there was negligence on the part of the employees or contractors of the Panchayat and holding the Panchayat vicariously liable for their negligence.

7. The learned counsel appearing for the respondents/plaintiffs supported the judgment of the trial court and drew our attention to the relevant evidence.

8. On perusal of the relevant record which is shown to us, we are satisfied that the finding of the trial court that there was a trench on the road and there was no signboard or diversion at that place is clearly borne out from the evidence on record. The Panchnama Ex.33 which was recorded on 22.11.1992 clearly shows that there was a small bridge on the road which is described as "Pooliyu" which had been washed away in the flow of water and at the place where there was the bridge and which had washed away there was a ditch which was 30 ft. in length and 8 ft. deep and in that ditch was lying the motorbike of the deceased the registration number of which is mentioned in the Panchnama. The work of the bridge was in progress but no signboard was placed nor was the place enclosed by any safety measures as deposed by the plaintiffs' witness Sushilaben at Ex.34. Even the appellant's witness who was working as an Assistant Engineer at the relevant time has in his deposition admitted that on 21.11.1992 no provision of any diversion was made at the said place and no signals regarding the work in progress or pits were placed in that area. Even if the work was not in progress at that time it was incumbent upon the Panchayat and its employees to put up a signboard to indicate danger in proceeding on the road where the bridge had been washed away. The trial court rightly held that on perusal of the Photograph Ex.53 which we have also perused, the trench was noticed. On the totality of the evidence on record, we are satisfied that it is because of the negligence of the employees and agents of the appellant Panchayat that the accident had

occurred leading to the death of Pratapbhai.

9. The evidence regarding the income of the deceased has been satisfactorily dealt with in the impugned judgment and we find ourselves in complete agreement with the trial court on its finding that the income of the deceased was Rs.3600/- per month. The trial court has worked out the dependency on correct principles in paragraph 23 of its judgment and reached the amount of compensation to Rs.3,75,000/- under various heads on a proper basis.

10. It was sought to be contended on behalf of the appellant that the award of interest at the rate of 15% per annum was on a higher side. On this aspect the learned counsel for the respondents/plaintiffs submitted that if interest was awarded at a lower rate of 12% per annum there will be no objection on the part of the plaintiffs. Having regard to the facts and circumstances of the case, we hold that the amount of interest should be worked out at the rate of 12% per annum instead of 15% per annum as awarded by the trial court.

11. In the above view of the matter, we uphold the judgment and order of the trial court subject to the slight modification of reducing the rate of interest from 15% to 12% per annum. The appeal is dismissed with no order as to costs subject to the above modification which should be reflected in the decree.

(R.K. Abichandani, J.)

14.2.2001. (A.M. Kapadia, J.)

(karan)